



Mitchell C. Shelowitz  
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December 20, 2007

**Via Facsimile**

Honorable Charles L. Brieant, U.S.D.J.  
United States District Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

Re: **Anne Bryant, et al v. Media Right, et al.: Index No: 07 CV 3050 (CLB)**

Dear Judge Brieant:

This letter is in response to Mr. Korik's letter of December 7, 2007.

Defendant Media Right Productions is a small music production company run by Defendant Douglas Maxwell who is legally blind and has already incurred over \$10,000 to defend this baseless law suit. Media Right Productions is bound to indemnify Defendant The Orchard.

Because we believe that Plaintiffs are unfairly using the federal courts to force an undue settlement from Defendants, we would respectfully request the Court's assistance to bring this case to closure at the earliest opportunity. The undisputed facts are:

- (1) This case is based upon a contract that authorized Defendant Media Right Productions to market and sell Plaintiffs' music (the "Gloryvision Agreement");
- (2) Media Right Productions received \$382.86 for such sales, and inadvertently forgot to pay to Plaintiffs the total sum of \$306.29.
- (3) In the interests of trying to minimize the litigation costs, Defendants have offered up to \$3,000 to Plaintiffs (nearly ten (10) times the amount due) to settle the matter, which Plaintiffs have rejected.
- (4) Despite numerous requests, Plaintiffs have failed to provide even one case or legal authority that supports their theory of the case or damages. Similarly, they have not produced documents in response to our document request, nor sent any reply to such requests.
- (5) The Court ordered mediation was unsuccessful due to what we believe to be unrealistic expectations by Plaintiffs and their counsel on the available damages for such a matter.



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We hereby respond to Plaintiffs' counsel's letter.

1. Location of Plaintiff Bernfeld's Deposition.

Mr. Korik's Letter Is Misleading. Mr. Korik did not provide an accurate description of the course of events regarding Plaintiffs' depositions, which were noticed on November 5, 2007. Following our deposition notices, Mr. Korik resisted producing Ms. Ellen Bernfeld, the signatory of the Gloryvision Agreement, which is at the core of this litigation.

While we agreed with Mr. Korik to hold the deposition of Ms. Ann Bryant on December 6<sup>th</sup>, as the attached emails from December 5<sup>th</sup> illustrate, Mr. Korik requested an adjournment of Ms. Bryant's deposition to which we agreed at approximately 4:30 pm on December 5<sup>th</sup>. To our surprise, and in complete contradiction to our earlier call with Mr. Korik, we received an email and a concurrent voicemail at approximately 5:43 p.m. "confirming" that the deposition of Ms. Bryant would proceed the following day.

We clearly advised Mr. Korik on December 5<sup>th</sup> that we would not take Ms. Bryant's deposition following the agreed adjournment as the attached emails show. Moreover, despite numerous requests, Plaintiffs still have not replied to our document requests of November 5<sup>th</sup> that were due on December 5<sup>th</sup>. In order to prepare for the Mediation and depositions, we had requested documents prior to the Mediation and the scheduled depositions. Despite Mr. Korik's promises, we still haven't received any documents.

We also decided, in the interests of minimizing our clients' increasing legal expenses from this matter, to focus on Ms. Bernfeld, the signatory of the Gloryvision Agreement, and the person who was involved with the discussions and negotiations with Mr. Maxwell on the Gloryvision Agreement.

Plaintiff Should Appear for a New York Deposition. Because Plaintiffs have availed themselves of the Federal Courts in New York on this lawsuit, Ms. Bernfeld should appear for a deposition in New York. Plaintiffs chose the forum, and a plaintiff must appear where the suit was initiated absent good cause. *See Seuthe v. Renewal Products, Inc.*, 38 F.R.D. 32; U.S. Dist. Lexis 6833 (S.D.N.Y. 1965). Moreover, it is unfair and prejudicial to Defendants to be prevented from conducting an in-person deposition of a plaintiff who has brought this action, and for Defendants to bear additional costs due to Plaintiff's preference or inconvenience.



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2. Defendants Have Provided Responsive Documents

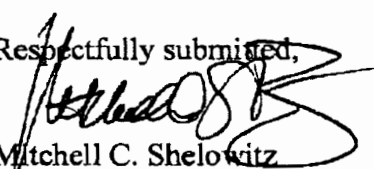
Again, Mr. Korik inaccurately portrays the facts on this point. On November 29, 2007 we produced documents in response to Plaintiffs' document requests. Mr. Korik never objected to the document production. We still have not received any formal written objections to the document production. While we believe the documents are self explanatory, we would be willing to discuss these documents with Mr. Korik to assist him in his review.

3. Prior Counsel Did Not Provide a Signed Answer for Filing

We were substituted as counsel in this matter on October 8, 2007. Soon after our substitution on this matter, we filed the Answer, which had been served on Plaintiffs by prior defense counsel, via ECF. We were not provided with a signed copy of the Answer that was served upon Plaintiffs, though Plaintiffs received such signed Answer from prior defense counsel. We intend to sign and file the Answer.

Thank you for your attention to these issues.

Respectfully submitted,

  
Mitchell C. Shelowitz

Enclosure

**Mitchell C. Shelowitz**

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**From:** Mitchell C. Shelowitz [mshelowitz@shelbro.com]  
**Sent:** Wednesday, December 05, 2007 6:11 PM  
**To:** 'Michael Korik'  
**Cc:** 'amitnick@shelbro.com'; 'PATRICK MONAGHAN'  
**Subject:** RE: Update / Confirmation

Dear Michael:

We were surprised to receive your email and voicemail "confirming" that the Ann Bryant deposition would go forward tomorrow, particularly since in our telephone call of approximately 4:30 pm today, you asked us to adjourn this deposition -- and we agreed to your request.

Based upon your request, we cancelled the court reporter, have rescheduled other commitments accordingly, and are no longer available to conduct the deposition.

Moreover, as we discussed, since Ellen Bernfeld is the signatory on the Agreement with Media Right and was involved in the contract negotiations with Mr. Maxwell, we have decided to conduct Ms. Bernfeld's deposition as a priority.

As discussed, we would like to conduct Ms. Bernfeld's deposition during the third week of December. Please confirm which days are available.

Finally, please let us know when we can expect to receive your response to our document production dated as of November 5, 2007.

Best regards,

Mitch

Mitchell C. Shelowitz  
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Mitch

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-----Original Message-----

From: Michael Korik [<mailto:mkorik@monaghanlawyers.com>]  
Sent: Wednesday, December 05, 2007 5:43 PM  
To: [mshelowitz@shelbro.com](mailto:mshelowitz@shelbro.com)  
Cc: [amitnick@shelbro.com](mailto:amitnick@shelbro.com); PATRICK MONAGHAN; Michael Korik  
Subject: Update / Confirmation

Mitch:

This email is to confirm that tomorrow's deposition of Anne Bryant will proceed as scheduled at 10:00 a.m. and as indicated in a message that I left in your voicemail.

Michael Korik, Esq.  
Monaghan, Monaghan, Lamb & Marchisio, L.L.P.  
28 West Grand Avenue  
Montvale, NJ 07645  
Tel: (201) 802-9060  
Fax: (201) 802-9066  
E-Mail: [mkorik@monaghanlawyers.com](mailto:mkorik@monaghanlawyers.com)

**Mitchell C. Shelowitz**

---

From: Michael Korik [mkorik@monaghanlawyers.com]  
Sent: Wednesday, December 05, 2007 6:22 PM  
To: mshelowitz@shelbro.com  
Subject: Re: Update / Confirmation

Anne Bryant will be here for the deposition tomorrow. I advised you that I will return your call after speaking with Anne and Pat. You noticed the deposition for tomorrow and we agreed. Your court reporter called and confirmed the deposition.

Please confirm the availability of your clients Doug Maxwell and a representative from the Orchard for a date in December.

We have made available to you the testimony of Anne Bryant - you have never previously requested the deposition of Ellen Bernfeld.

Your response to our document production is deficient.

You will receive a response to your document production request shortly.

Sincerely,

Michael

----- Original Message -----

From: "Mitchell C. Shelowitz" <mshelowitz@shelbro.com>  
To: "'Michael Korik'" <mkorik@monaghanlawyers.com>  
Cc: <amitnick@shelbro.com>; "'PATRICK MONAGHAN'" <mmlmlawyers@aol.com>  
Sent: Wednesday, December 05, 2007 6:10 PM  
Subject: RE: Update / Confirmation

Dear Michael:

We were surprised to receive your email and voicemail "confirming" that the Ann Bryant deposition would go forward tomorrow, particularly since in our telephone call of approximately 4:30 pm today, you asked us to adjourn this deposition -- and we agreed to your request.

Based upon your request, we cancelled the court reporter, have rescheduled other commitments accordingly, and are no longer available to conduct the deposition.

Moreover, as we discussed, since Ellen Bernfeld is the signatory on the Agreement with Media Right and was involved in the contract negotiations with Mr. Maxwell, we have decided to conduct Ms. Bernfeld's deposition as a priority.

As discussed, we would like to conduct Ms. Bernfeld's deposition during the third week of December. Please confirm which days are available.

Finally, please let us know when we can expect to receive your response to our document production dated as of November 5, 2007.

Best regards,

**Mitchell C. Shelowitz**

---

**From:** Mitchell C. Shelowitz [mshelowitz@shelbro.com]  
**Sent:** Wednesday, December 05, 2007 7:36 PM  
**To:** 'Michael Korik'  
**Cc:** 'amitnick@shelbro.com'  
**Subject:** RE: Update / Confirmation

Dear Michael:

You asked me for an adjournment of tomorrow's deposition and I agreed to your request. You told me that you were going to get back to me with regard to a more realistic settlement counterproposal and we are still waiting. We will not be there tomorrow and as I mentioned, we cancelled the court reporter.

We are entitled to take the depositions of the plaintiffs under the Federal Rules of Civil Procedure and we intend to take Ms. Bernfeld's deposition as a priority. Her deposition was noticed at the same time that Ms. Bryant's deposition was noticed, and since Ms. Bernfeld is the signatory to the agreement with Media Right and was involved with the contract discussions with Media Right, we view her testimony as particularly relevant to the issues.

We propose December 19, 20, or 21 to take Ms. Bernfeld's deposition. Please let us know on which date she can testify.

Please propose dates in the third week of December or the second week in January that you are available to take defendants' depositions and we will check with the defendants on their availability.

Best regards,

Mitch

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